County of Loudoun

Department of Planning

5

MEMORANDUM

DATE:

September 19, 2007

TO:

Transportation/Land Use Committee

FROM: -

Joe Gorney, AICP, Project Manager

SUBJECT:

September 24, 2007 Transportation/Land Use Committee Meeting:

CPAM 2005-0004, Eminent Domain and Protection of Existing Communities

RECOMMENDATIONS

<u>Planning Commission</u>: On September 10, 2007 the Planning Commission voted 8-0-1 (Lewis – abstained) to certify and forward CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to the Board of Supervisors with a recommendation of approval.

Staff:

- Maintain provisions for eminent domain as prescribed by State Code;
- Retain redevelopment policies as an option; and
- Retain the Community Plan process as the framework for determining how many, where, or whether Town Centers/Downtowns are developed.

BACKGROUND

The Board of Supervisors held a Public Hearing regarding the Plan Amendment on September 11, 2007. One person spoke who supported the Board's addition of specific policies limiting the public use of eminent domain.

The Board of Supervisors discussed various aspects of the proposed Plan Amendment including:

- Circumstances that would warrant the use of eminent domain;
- The importance of preserving the development pattern of existing communities in the Suburban Policy Area;
- The difference between the terms "redevelopment" and "revitalization;"
- The number and location of town centers;
- Distinctions between the terms "downtowns," "town centers," and "neighborhood supportive retail uses;" and
- Community involvement in planning efforts.

The Board voted 7-0-2 (York, Kurtz – absent) to forward the item to the September 24, 2007 Transportation/Land Use Committee for further discussion.

In preparing for the Committee discussion, Supervisor Staton has suggested that it be organized around the three components of the Plan Amendment: eminent domain, redevelopment/revitalization, and town centers. To facilitate this discussion, clean copies of the Board of Supervisors-recommended Plan language and the Planning Commission-recommended language are attached (Attachments 1 and 2). Also, the recently adopted State Code provisions and limitations regarding eminent domain are provided in Attachment 3.

Staff requests that Committee members bring their staff reports from the September 11, 2007 Public Hearing to the meeting.

SUGGESTED MOTIONS

1. I move that the Transportation/Land Use Committee forward CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to a future Transportation/Land Use Committee meeting for further discussion of outstanding issues.

OR,

2. I move that the Transportation/Land Use Committee forward CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to a Board of Supervisors Business Meeting with a recommendation of approval.

OR,

3. I move that the Transportation/Land Use Committee forward CPAM 2005-0004, Eminent Domain and Protection of Existing Communities, to a Board of Supervisors Business Meeting with a recommendation of approval subject to revisions agreed upon at the September 24, 2007 Transportation/Land Use Committee meeting.

OR,

4. I move an alternate motion.

ATTACHMENTS

- 1. BOS-Proposed policies, dated March 20, 2007
- 2. Planning Commission-Recommended policies, dated September 10, 2007
- 3. State Code provisions and limitations regarding Eminent Domain

PROPOSED POLICY LANGUAGE FOR CPAM 2005-0004: Eminent Domain and Protection of Existing Communities BOS-Proposed Language, March 20, 2007

Blue Text: deleted Red Text: added

Amend 'General Plan Strategy' text pertaining to the Suburban Policy Area (Revised General Plan, Chapter 2 pg. 2-6):

Over the next twenty years, it is anticipated that the Suburban Policy Area will continue to build out in a suburban pattern as a low-density fringe to the Washington, D.C. Metropolitan Region. The area will be characterized by a pattern of residential neighborhoods, town centers, and regional business centers linked by a substantial network of roads, liner parks, and open spaces. As existing neighborhoods mature, redevelopment and revitalization plans will be developed to ensure the continuing vitality of these areas. protect and preserve these established communities.

As express bus (expected in 2004) and eventually bus rapid transit (expected in 2010) and rail become available, higher-density land uses along major thoroughfares will become appropriated. Transit nodes and urban centers including a mix of uses and transportation nodes will develop. Very compact in form, they will be designed for full pedestrian access and served by mass transit. The first nodes will appear along the Dulles greenway corridor, where right-of-way exists for a rail transit corridor, and in-fill areas within existing developments. "Downtowns" in each of the four communities will be considered as part of the redevelopment strategy to be detailed in the Community Plan process.

Add new Policy 16 under 'Economic Development Policies' (Revised General Plan, Chapter 4 pg 4-10):

16. <u>Loudoun County will not exercise the power of eminent domain for economic development purposes.</u>

Amend 'Land Use Pattern and Design' text (Revised General Plan, Chapter 6 pg. 6-2):

The County's vision for the Suburban Policy Area is that the four large communities increase in quality and become more distinct places. Policies below address ways to improve livability through (1) protecting and recapturing elements of the Green Infrastructure, including open space; (2) ensuring compatible and complementary infill development; and (3) revitalizing and redeveloping the aging areas in the Suburban Policy Area. existing neighborhoods in a way that protects and preserves our existing communities.

Amend Policy 13 under 'Land Use Pattern and Design Policies' (Revised General Plan, Chapter 6, pg. 6-7):

13. There will be four (4) Town Centers one (1) Transit-Oriented Development (TOD), one (1) Transit-Related Employment Center (TREC), and one (1) Urban Center in the Suburban Policy Area. Town Centers will be considered for development west of Route 28 in the Suburban Policy Area.

Amend 'A. Four Distinct Communities' text, bullet 2 (<u>Revised General Plan</u>, Chapter 6, pg. 6-8):

• Each communityies west of Route 28 will have a recognized Town Center. All communities will provide a full range of housing types, and provide for a diverse, stimulating social, cultural, recreational, and spiritual environment.

Delete 'E. Transportation' text, (Revised General Plan, Chapter 6, pg. 6-12):

With the advent of transit, it is important that the County plan land uses accordingly. The County will identify future transit areas as Town Centers in each of the four communities during the Community Plan process. These areas may be targeted for redevelopment to facilitate transit, such as bus. In addition, mixed-use communities that provide pedestrian-scale environments promote walking and bicycling, which reduces automobile trips.

Delete 'F. Infill, Revitalization, and Redevelopment' text (<u>Revised General Plan</u>, Chapter 6, pg. 6-15):

Although much of the Suburban Policy area has been developed, this area will continue to evolve. The County envisions redevelopment to concentrate density into four Town Centers within the four distinct communities. This type of redevelopment might be considered "vertical" development. As the second wave of development occurs, the County will encourage new growth into the compact Town Centers of the four communities. These downtown areas will be identified in the Community Plan process.

Amend Policy 2 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6, pg. 6-15):

2. Redevelopment of existing uses will be based on the availability of adequate public facilities, transportation facilities, and infrastructure. The County desires the assemblage of small, adjacent under-utilized sites to achieve a consistent and compatible development pattern. Established residential communities will be protected and preserved through revitalization plans.

Amend Policy 7 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6, pg. 6-15):

7. Higher density development as defined in the *Revised General Plan* will occur as redevelopment in the Suburban Policy Area in the Transit-Oriented Development, Urban Center, and in the Town Centers, or "community cores," of the four communities west of Route 28. These areas will have the highest densities in the Suburban Policy Area. The Town Centers will be identified during the Community Planning process.

Amend Policy 12 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6, pg. 6-16):

12. The County will provide incentives and resources for the redevelopment and revitalization of developed areas established neighborhoods within the four communities to retrofit neighborhoods to be pedestrian/bicycle oriented; to institute traffic calming, street lighting, and sidewalks; preserve the quality of life in these areas, and to convert inefficient retail and commercial development.

Add new Policy 14 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6 pg 6-16):

14. Loudoun County will not exercise the power of eminent domain for economic development purposes.

Amend '3. Town Centers' text (Revised General Plan, Chapter 6, pg. 6-19):

The Plan envisions that each of the four larger communities west of Route 28 will each have one Town Center. Town Centers serve as the "downtown" or community core of the four suburban communities. Town Centers must be compact and designed to accommodate pedestrian and vehicular traffic with a full complement of services and amenities.

Amend Policy 1 under 'Town Center Policies' (Revised General Plan, Chapter 6, pg. 6-19):

1. A Town Center functions as the "downtown" of each community with a mix of residential and business uses in a compact setting. Each of tThe four communities west of Route 28 will have a Town Center, the location of which will be determined in the Community Plan process.

Amend 'B. Suburban Community Design Guidelines' text (<u>Revised General Plan</u>, Chapter 11, pg. 11-5):

This Plan strongly endorses the development of four distinctive communities. For the communities west of Route 28, that this will include a mixed-use town center surrounded by residential neighborhoods and areas of natural open space to promote a sense of community, foster a pedestrian-friendly environment, lessen reliance on the automobile, and respect Loudoun's historic growth pattern of small towns surrounded by farms and open space.

Amend '3. Town Centers' text (Revised General Plan, Chapter 11, pg. 11-10):

a. Function

Four Town Centers will serve as the downtown of each of the four Suburban Policy Area communities: west of Route 28. A Town Center should have a lively, robust extrovert character suitable for employment, commercial, and public activities.

Amend the definition of Town Center (Revised General Plan, Glossary, pg. G-11):

Town Center: A mixed-use, concentrated community core, which will serve as a downtown for each of the four ssuburban communities west of Route 28. A town center will emphasize pedestrian movement over vehicular movement to create a pedestrian-friendly environment, with a full complement of services and amenities.

PROPOSED POLICY LANGUAGE FOR CPAM 2005-0004:

Eminent Domain and Protection of Existing Communities Changes to Chapters 2, 4, 6, 11, & Glossary of the Revised General Plan Policies revised through September 10, 2007

Amend 'General Plan Strategy' text pertaining to the Suburban Policy Area (<u>Revised General Plan</u>, Chapter 2, p. 2-6):

Over the next twenty years, it is anticipated that the Suburban Policy Area will continue to build out in a suburban pattern as a low-density fringe to the Washington, D.C. Metropolitan Region. The area will be characterized by a pattern of residential neighborhoods, town centers, and mixed-use business centers linked by a substantial network of roads, linear parks, and open spaces. As existing neighborhoods mature, revitalization plans will be developed to protect and ensure the continuing vitality of these established communities.

As express bus (expected in 2004) and eventually bus rapid transit (expected in 2010) and rail become available, higher-density land uses along major thoroughfares will become appropriate. Transit nodes and urban centers including a mix of uses and transportation modes will develop. Very compact in form, they will be designed for full pedestrian access and served by mass transit. The first nodes will appear along the Dulles Greenway corridor, where right-of-way exists for a rail transit corridor, and in in-fill areas within existing developments.

Add new Policy 16 under 'Economic Development Policies' (<u>Revised General Plan</u>, Chapter 4, p. 4-10):

16. Loudoun County will exercise the power of eminent domain only as described by State Code.

Amend 'Land Use Pattern and Design' text (Revised General Plan, Chapter 6, p. 6-2):

The County's vision for the Suburban Policy Area is that the four large communities increase in quality and become more distinct places. Policies below address ways to improve livability through (1) protecting and enhancing elements of the Green Infrastructure, including open space; (2) ensuring compatible and complementary infill development; and (3) revitalizing existing neighborhoods in a way that protects and enhances our existing communities.

Amend Policy 13 under 'Land Use Pattern and Design Policies' (<u>Revised General Plan</u>, Chapter 6, p. 6-7):

13. There will be one (1) Transit-Oriented Development (TOD), one (1) Transit-Related Employment Center (TREC), and one (1) Urban Center in the Suburban Policy Area. Town Centers may be considered for development west of Route 28 or in the area bounded by Route 28, Sterling Boulevard, the W&OD Trail, the Fairfax County/Town of Herndon line, and the Dulles Toll Road in the Suburban Policy Area.

Amend 'A. Four Distinct Communities' text, bullet 2 (Revised General Plan, Chapter 6, p. 6-8):

All communities should seek to provide a full range of housing types, and provide for a diverse, stimulating social, cultural, recreational, and spiritual environment. Communities west of Route 28 or in the area bounded by Route 28, Sterling Boulevard, the W&OD Trail, the Fairfax County/Town of Herndon line, and the Dulles Toll Road may have a recognized Town Center.

Delete 'E. Transportation' text, (*Revised General Plan*, Chapter 6, p. 6-12):

With the advent of transit, it is important that the County plan land uses accordingly. In addition, mixed-use communities should provide pedestrian-scale environments that promote walking and bicycling, which reduces automobile trips.

Delete 'F. Infill, Revitalization, and Redevelopment' text (Revised General Plan, Chapter 6. p. 6-15):

Amend Policy 2 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6, p. 6-15):

2. Redevelopment of existing uses will be based on the availability of adequate public facilities. transportation facilities, and infrastructure. The County desires the assemblage of small, adjacent under-utilized sites to achieve a consistent and compatible development pattern. Established residential communities will be protected and enhanced through revitalization plans.

Amend Policy 7 under 'Infill, Redevelopment, and Revitalization Development Policies' (Revised General Plan, Chapter 6, p. 6-15):

7. Higher density development as defined in the Revised General Plan will occur as redevelopment in the Suburban Policy Area in the Transit-Oriented Development, Urban Center, and in the Town Centers, or "community cores," of the four communities west of Route 28 or in the area bounded by Route 28, Sterling Boulevard, the W&OD Trail, the Fairfax County/Town of Herndon line, and the Dulles Toll Road. These areas will have the highest densities in the Suburban Policy Area. Town Centers should be identified through a community planning process.

Amend Policy 12 under 'Infill, Redevelopment, and Revitalization Development Policies' (*Revised General Plan*, Chapter 6, p. 6-16):

12. The County will provide incentives and resources for the revitalization of established neighborhoods to preserve the quality of life in these areas through the provision of community amenities, such as, but not limited to, pedestrian/bicycle facilities, traffic calming, street lighting, sidewalks, and improved retail and commercial establishments.

Add new Policy 14 under 'Infill, Redevelopment, and Revitalization Development Policies' (*Revised General Plan*, Chapter 6, p. 6-16):

14. Loudoun County will exercise the power of eminent domain only as described by State Code.

Amend '3. Town Centers' text (Revised General Plan, Chapter 6, p. 6-19):

The Plan anticipates that communities west of Route 28 or in the area bounded by Route 28, Sterling Boulevard, the W&OD Trail, the Fairfax County/Town of Herndon line, and the Dulles Toll Road may have one or more Town Centers that serve as the "downtown" or community core of the communities. Town Centers must be compact and designed to accommodate pedestrian and vehicular traffic with a full complement of services and amenities.

Amend Policy 1 under 'Town Center Policies' (Revised General Plan, Chapter 6, p. 6-19):

1. A Town Center functions as the "downtown" of the local community with a mix of residential and business uses in a compact setting. The communities west of Route 28 or in the area bounded by Route 28, Sterling Boulevard, the W&OD Trail, the Fairfax County/Town of Herndon line, and the Dulles Toll Road may have Town Centers. The locations of Town Centers should be determined through a community planning process or established during the consideration of a land development proposal that includes a community outreach and input process.

Amend 'B. Suburban Community Design Guidelines' text (<u>Revised General Plan</u>, Chapter 11, p. 11-5):

This Plan strongly endorses the development of distinctive communities. This may include town centers and other mixed-use developments surrounded by residential neighborhoods and areas of natural open space to promote a sense of community, foster a pedestrian-friendly environment, and lessen reliance on the automobile.

Amend '3. Town Centers' text (Revised General Plan, Chapter 11, p. 11-10):

a. Function

A Town Center should have a lively, robust character integrating employment, commercial, residential and public uses.

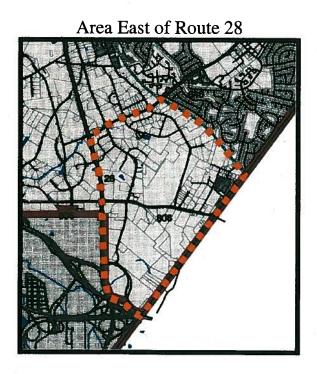
Amend the definition of Town Center (*Revised General Plan*, Glossary, p. G-11):

Town Center: A mixed-use, concentrated community core, which integrates employment, commercial, residential, and public uses. A town center will emphasize pedestrian movement over vehicular movement to create a pedestrian-friendly environment and will offer a full complement of services and amenities.

Definitions to be added to Glossary (*Revised General Plan*, Glossary, p. G-11):

Redevelopment: A change in land use which would involve the removal and replacement, rehabilitation, or adaptive reuse of an existing structure or structures, or of land from which previous improvements have been removed. Redevelopment should be compatible with adjacent properties and occur with input and involvement from the community.

Revitalization: Re-establishing the economic and social vitality of an existing neighborhood or area through legislation, tax incentives, and other programs that maintain and enhance the existing development pattern and preserve the original building stock and historic character.



Virginia State Code, § 1-219.1. Limitations on eminent domain.

A. The right to private property being a fundamental right, the General Assembly shall not pass any law whereby private property shall be taken or damaged for public uses without just compensation. The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined as to embrace only the acquisition of property where: (i) the property is taken for the possession, ownership, occupation, and enjoyment of property by the public or a public corporation; (ii) the property is taken for construction, maintenance, or operation of public facilities by public corporations or by private entities provided that there is a written agreement with a public corporation providing for use of the facility by the public; (iii) the property is taken for the creation or functioning of any public service corporation, public service company, or railroad; (iv) the property is taken for the provision of any authorized utility service by a government utility corporation; (v) the property is taken for the elimination of blight provided that the property itself is a blighted property; or (vi) the property taken is in a redevelopment or conservation area and is abandoned or the acquisition is needed to clear title where one of the owners agrees to such acquisition or the acquisition is by agreement of all the owners.

B. For purposes of this section:

"Blighted property" means any property that endangers the public health or safety in its condition at the time of the filing of the petition for condemnation and is (i) a public nuisance or (ii) an individual commercial, industrial, or residential structure or improvement that is beyond repair or unfit for human occupancy or use.

"Government utility corporation" means any county or municipality, or entity or agency thereof, which provides or operates one or more of the following authorized utility services: gas, pipeline, electric light, heat, power, water supply, sewer, telephone, or telegraph.

"Public corporation" means the Commonwealth of Virginia or any political subdivision thereof or any incorporated municipality therein or any public agency of the Commonwealth or of any political subdivision thereof or of any municipality therein.

"Public facilities" means (i) airports, landing fields, and air navigation facilities; (ii) educational facilities; (iii) flood control, bank and shore protection, watershed protection, and dams; (iv) hospital facilities; (v) judicial and court facilities; (vi) correctional facilities, including jails and penitentiaries; (vii) library facilities; (viii) military installations; (ix) parks so designated by the Commonwealth or by the locality in its comprehensive plan; (x) properties of historical significance so designated by the Commonwealth; (xi) law enforcement, fire, emergency medical, and rescue facilities; (xii) sanitary sewer, water or stormwater facilities; (xiii) transportation facilities including highways, roads, streets, and bridges, traffic signals, related easements and rights-of-way, mass transit, ports, and any components of federal, state, or local transportation facilities; (xiv) waste management facilities for hazardous, radioactive, or other waste; (xv) office facilities occupied by a public corporation; and (xvi) such other facilities that are necessary to the construction, maintenance, or operation of a public facility as listed in clauses (i) through (xv) and directly related thereto.

C. No more private property may be taken than that which is necessary to achieve the stated public use.

- D. Except where property is taken (i) for the creation or functioning of a public service corporation, public service company, or railroad; or (ii) for the provision of any authorized utility service by a government utility corporation, property can only be taken where: (a) the public interest dominates the private gain and (b) the primary purpose is not private financial gain, private benefit, an increase in tax base or tax revenues, or an increase in employment.
- E. During condemnation proceedings, the property owner may challenge whether the taking or damaging is for a public use, the stated public use is a pretext for an unauthorized use, or the taking or damaging of property is a violation of subsection D. Nothing in this section shall be construed as abrogating any defenses or rights otherwise available to the property owner independently of this section.
- F. Subject to the provisions of subsection D, the limitations contained in this section shall not abrogate any other provision of law that authorizes a condemnor to dispose of property taken for a public use as surplus property, as otherwise provided by law.
- G. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the entire property for its fair market value as otherwise provided by law, but the condemnor shall not acquire an uneconomic remnant if the owner objects and desires to maintain ownership of the excess property.
- H. The provisions of this section shall control to the extent there are any inconsistencies between this section and any other general or special law; otherwise, nothing herein shall be construed as abrogating the power of eminent domain delegated independently of this section.
- I. The provisions of this section shall not apply to the forfeiture of property under Chapters 22 (§ 19.2-369 et seq.), 22.1 (§ 19.2-386.1 et seq.), and 22.2 (§ 19.2-386.15 et seq.) of Title 19.2.
- J. The provisions of this section shall not apply to real property that is subject to a certificate of take or a certificate of deposit recorded prior to July 1, 2007, in the circuit court clerk's office for the circuit where the real property is located or real property that is the subject of a petition for condemnation filed prior to July 1, 2007.

(2007, cc. 882, 901, 926.)

Virginia State Code Excerpts

Limitations on eminent domain (§ 1-219.1.A.)

The right to private property being a fundamental right, the General Assembly shall not pass any law whereby private property shall be taken or damaged for public uses without just compensation. The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined as to embrace only the acquisition of property where:

- (i) the property is taken for the possession, ownership, occupation, and enjoyment of property by the public or a public corporation;
- (ii) the property is taken for construction, maintenance, or operation of public facilities by public corporations or by private entities provided that there is a written agreement with a public corporation providing for use of the facility by the public;
- (iii) the property is taken for the creation or functioning of any public service corporation, public service company, or railroad;
- (iv) the property is taken for the provision of any authorized utility service by a government utility corporation;
- (v) the property is taken for the elimination of blight provided that the property itself is a blighted property; or
- (vi) the property taken is in a redevelopment or conservation area and is abandoned or the acquisition is needed to clear title where one of the owners agrees to such acquisition or the acquisition is by agreement of all the owners.

Public Facilities (§ 1-219.1.B.)

- (i) Airports, landing fields, and air navigation facilities;
- (ii) Educational facilities;
- (iii) Flood control, bank and shore protection, watershed protection, and dams;
- (iv) Hospital facilities;
- (v) Judicial and court facilities;
- (vi) Correctional facilities, including jails and penitentiaries;
- (vii) Library facilities;
- (viii) Military installations;
- (ix) Parks so designated by the commonwealth or by the locality in its comprehensive plan;
- (x) Properties of historical significance so designated by the commonwealth;
- (xi) Law enforcement, fire, emergency medical, and rescue facilities;
- (xii) Sanitary sewer, water or stormwater facilities;
- (xiii) Transportation facilities including highways, roads, streets, and bridges, traffic signals, related easements and rights-of-way, mass transit, ports, and any components of federal, state, or local transportation facilities;
- (xiv) Waste management facilities for hazardous, radioactive, or other waste;
- (xv) Office facilities occupied by a public corporation; and
- (xvi) Such other facilities that are necessary to the construction, maintenance, or operation of a public facility as listed in clauses (i) through (xv) and directly related thereto.

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